

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED - CLERK
U.S. DISTRICT COURT
2005 APR 12 PM 3:31
TX EASTERN-DEAUNONT

RICHARD JAMES JOHNSON

§

BY 

v.

§

CIVIL ACTION NO. 9:04cv276

ALBERT CHARANZA, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Richard Johnson, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson complains that the Defendants gave false testimony in two lawsuits that he filed. As the Magistrate Judge stated, the allegations made in the present lawsuit are identical to those in another lawsuit which Johnson filed. See Johnson v. Charanza, et al., civil action no. 9:04cv251 (E.D.Tex., dismissed January 5, 2005). Johnson's prior lawsuit was dismissed under 28 U.S.C. §1915(g) because of Johnson's extensive history of filing frivolous lawsuits.

On March 1, 2005, the Magistrate Judge issued a Report recommending that Johnson's lawsuit be dismissed. The Magistrate Judge observed that the Fifth Circuit has held that *in forma pauperis* lawsuits which merely repeat pending or litigated claims may be considered frivolous and abusive, and dismissed as such. Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). In addition, the Magistrate Judge concluded that the bar imposed by 28 U.S.C. §1915(g) also applied in the present case.

A copy of this Report was sent to Johnson at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for leave to proceed *in forma pauperis* is DENIED. It is further

ORDERED that the above-styled civil rights lawsuit be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$250.00 filing fee. Should Johnson pay the full filing fee within 30 days after the entry of dismissal, he will be allowed to proceed in the lawsuit as though the full filing fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this case are hereby DENIED.

SIGNED this 11th day of April, 2005.



RON CLARK
UNITED STATES DISTRICT JUDGE